

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

RENTAL SERVICE CORPORATION,
METROQUIP DIVISION

Employer

and

TEAMSTERS LOCAL 120, affiliated with the
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AFL-CIO

Petitioner

Case 18-RC-16425

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.¹

¹ The Employer, Rental Service Corporation, Metroquip Division, is an Arizona corporation engaged in the business of equipment rental, with an office and places of business in Plymouth, Minnesota; Burnsville, Minnesota; and Oakdale, Minnesota. During the past twelve months, a representative period, the Employer purchased and received at its Plymouth, Minnesota facility goods and services directly from outside Minnesota with a value in excess of \$50,000.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. Petitioner seeks to represent a unit of all drivers at the Employer's Plymouth, Oakdale² and Burnsville stores, approximately 11 employees. The Employer asserts that the appropriate unit should also include mechanics, yard attendants, parts employees, the dispatcher, and the plant clerical, also known as a service coordinator.³ There is no history of collective bargaining among the Employer's employees.

The Employer is in the business of providing construction equipment to customers on a rental basis. The equipment ranges in size from smaller items which can be picked up and loaded by hand into smaller trucks, up to large motorized pieces which are delivered to customers on flatbed semi-trailers. The Employer also has a staff of mechanics who service and maintain the rental equipment, and also service equipment owned by customers. The Employer's main facility is located at Plymouth, and it is the hub which supports the other facilities. There are approximately 55-60 employees working at the Plymouth facility, including nine drivers, five yard attendants, fifteen mechanics, two parts coordinators, one dispatcher, and one service coordinator, which the Employer claims must be included in the unit found appropriate. The Employer also would include the driver, two mechanics and three yard

² The Oakdale store, as it was referred to at the hearing, is actually located in St. Paul, Minnesota.

³ At the hearing, the Employer took the alternative position that a unit of all the above-listed employees at its Plymouth facility only would also constitute an appropriate unit. The Employer appears to have abandoned this alternative argument in its brief.

attendants at the Oakdale store, plus the driver, three mechanics, and three yard attendants at the Burnsville store.

The three facilities are approximately 35 miles from each other. The General Manager of the Plymouth facility is Garth Landefeld. He is also the product support manager for Rental Service Corporation, and in that capacity is responsible for designing policies and processes, including labor relations policies, that govern all three stores. The Oakdale and Burnsville stores are each managed by an operations manager. Each location has similar equipment, but Plymouth has a much larger repair facility.⁴ Landefeld testified that there is centralization of functions at Plymouth, including dispatch of drivers and mechanics, and billing. He stated that in 1996, the drivers were leased from Penske, which lasted until 1998, when they were re-hired as employees of the Employer. Landefeld's superior is District Manager Victor Kylochko, who is responsible for all three stores.

The drivers from all three stores are centrally dispatched from Plymouth, and are responsible for transporting equipment to customers and back again. They are required to carry commercial drivers licenses, unlike any other of the Employer's employees. Drivers from the different facilities encounter one another frequently because they either travel to the Employer's other facilities, or else see each other at a job site where they are making a delivery. Delivery Manager Dave Salonen works out of the Plymouth facility and is the drivers' direct supervisor. The drivers receive instructions from him and dispatcher Jan Johnson. Salonen also supervises Johnson. Landefeld testified that Salonen, along with service supervisors John Aldinger and Mike Rivers, all work with the Plymouth yard attendants on a joint basis. However, Aldinger

⁴ Other employees found only at Plymouth are sales coordinators, service supervisors, sales manager, salesmen, a sales secretary, billing clerks, and the district manager. These employees are not at issue in this proceeding.

testified that it is his responsibility to supervise the yard attendants⁵ and shop mechanics.

Aldinger and Rivers also share responsibility for the field mechanics. Landefeld supervises the parts employees, and Aldinger and Rivers supervise the service coordinator. At the other two locations, operations managers Jeff Joles (Oakdale) and Joe Ahrens (Burnsville) supervise the mechanics and yard attendants.

Yard attendants move equipment around the yard, fuel equipment, help mechanics work on equipment, help customers, and are generally entry-level employees who are training to be mechanics. Shop mechanics make sure the rental equipment is safe, do necessary maintenance and repair on it, and go through an OSHA checklist to ensure safety. Field mechanics work on customer equipment that has been brought in for repair, and also go out to repair machines in the field. Parts employees maintain inventories of the parts necessary to repair and maintain the rental equipment, and account for the parts that other employees take out of the parts room. They also help monitor the inventories at the other two locations by phone and fax, and send over necessary parts either by driver or by courier. The dispatcher gives assignments to the drivers, drives trucks to repair facilities, picks up new trucks, test-drives trucks, and gives drivers rides. He also works with the service coordinator to move customer-owned equipment which has been repaired, and coordinates parts that need to be delivered to the other stores. The service coordinator (or plant clerical, as she was sometimes referred to during the hearing) is responsible for the paperwork associated with deliveries and repairs. She processes work orders from mechanics following their repair of equipment, processes the monthly work orders for each

⁵ Salonen testified that his “supervision” of the yard attendants is mainly to identify by list what equipment needs to be readied for delivery the following morning and the yard attendants then gather the items on the list and stage it for the drivers. If an item cannot be found, they report that fact back to Salonen, who makes alternate arrangements to procure the item.

truck, bills customers for damaged equipment, deals with certain warranty items, and may help dispatch. She does not fill in for drivers, yard attendants or mechanics.

Evidence was presented which showed that there had been permanent transfers from the position of parts employee, mechanic, and yard attendant to driver; however it does not appear that any drivers have permanently transferred to any of the other positions. The parties stipulated that the classifications of all the employees in issue were covered by such common terms and conditions of employment as the employee handbook, the company benefit program, the lunchroom⁶ and restroom facilities, safety incentive program, parking, job postings, locker room, some social functions, and that they are all paid hourly, and use the same time clock system. Landefeld claimed not to know what the drivers' wage rates were, or how those rates compared to other employees. The record is otherwise silent as to wage rates. Drivers, mechanics and yard attendants wear the same company-provided uniforms. Parts employees and the dispatcher are given uniform shirts, and the service coordinator wears street clothes. Landefeld testified that meetings are called to train employees on equipment and safety issues, and in some cases drivers will attend these together with mechanics and yard attendants. When they do not attend together, it is because of scheduling problems. He testified that they try to have all the training at the Plymouth facility.

Landefeld also testified that drivers, mechanics and yard attendants go into the parts department daily and thus have contact with the employees there. Plymouth-based driver Terry Olsen testified by contrast that his contact with parts employees is "slim to none," and that

⁶ There was a conflict in the evidence regarding the use of the lunchroom. Landefeld testified that to his knowledge, drivers used the lunchroom along with other employees. However, driver Terry Olsen testified that he does not have time to eat lunch, and believed the other drivers don't either.

typically he does not receive supplies from the parts department. He stated that he had been told by Salonen to pick up fluids such as windshield washer fluid at the truck stop.

Drivers typically begin their day at 5:30 to 5:45 a.m., and they are the earliest to arrive. Drivers typically work an 11-12 hour day, and are told when they can leave by dispatcher Johnson. Yard attendants, mechanics and the dispatcher start at 6:30 a.m. and the parts employees at 7:00 and 8:00 a.m. The service coordinator begins at 7:30 a.m. The record was silent as to the quitting time of non-driver employees.

Landefeld testified that repairs to the drivers' trucks are done either by mechanics, by the drivers themselves, or are outsourced to one of several repair companies. Driver Terry Olsen testified that the mechanics do not have the expertise to repair his truck; and that if he can't do it, the truck is sent to an outside shop for repair. Olsen stated that mechanics had done some repairs on other trucks, but that this was not typical of their duties. Olsen stated that he does his own routine servicing on his truck, such as adding oil and other fluids.

Olsen described the truck he drives, a low-boy, as a tractor-trailer which usually hauls larger machines that don't fit on a smaller truck called a rollback. A rollback is a semi-tractor with a flat bed on the back. The Employer has four low-boys and approximately six rollbacks. A commercial drivers license is required to operate these trucks. The Employer also has a fleet of pickup trucks which anyone can drive.⁷ Olsen testified that he occasionally uses a pickup to make a delivery. He stated that on a typical morning, once they have picked up their paperwork from dispatcher's work area (which gives the day's initial delivery assignments), drivers load their trucks and proceed to go through a standard checklist, inspecting the truck's brakes, tires,

⁷ Yard attendants use the pickup trucks to make deliveries if there is not a driver available to do it, or in the case of a customer emergency.

oil, antifreeze, windshield lights, blinkers, etc. Olsen stated that sometimes only one large piece will be loaded on the truck for delivery because it takes up the whole trailer, and other times, eight or ten smaller pieces can be loaded at once.

Salonen described the Employer's weekend call-in policy. A driver and a mechanic are assigned to a weekend on a rotating basis, and are required to take a pager home in case a machine breaks down or a customer needs a machine. According to Salonen, a typical situation would be where a customer has a piece of equipment break down and a mechanic is called to go out and see if he can fix it. If he can't, he may call the driver and have him come out and bring a new machine and help the driver load and remove the broken piece of equipment. If they are unsuccessful at meeting the customer's need, a supervisor will be called.

There was also a conflict in testimony with regard to the amount of contact drivers have with other employees, particularly the yard attendants and mechanics, and how much those employees actually assist drivers in performing their duties. Salonen testified that all three groups are at times together working in the yard. He stated that mechanics and yard attendants might be helping drivers load and unload their trucks, and that drivers and yard attendants might be working together to help customers unload their equipment at the loading docks. He stated that all three types of employees will attempt to jump-start machines that won't start, or otherwise trouble-shoot the machines together. All three groups use forklifts, and wash and move equipment in and out of the same areas at the Plymouth facility. Salonen also stated that when machines break down in the field, many times a mechanic will go out and help a driver get it on his truck because it is not driveable. Yard attendants and drivers gas up equipment, and all three groups use the same area to do repairs, wash equipment, and heat up trucks to get them running, according to Salonen.

Salonen also testified that the dispatcher, drivers and mechanics have radios, and that drivers contact mechanics if they are having trouble in the field. Mechanics also call drivers to find out where machinery is broken down, and they may meet at job site to deal with it. Salonen testified that yard attendants also deliver equipment to customers when it needed to be done in a hurry, and there was not a driver available to do it. He also stated that a mechanic might even be sent out in an emergency. He admitted, however, that only drivers have commercial drivers licenses, and accordingly, there is some equipment that yard attendants could not deliver because they do not hold such a license.⁸ As to drivers doing mechanical work, Salonen testified that this happens when they are out in the field delivering equipment and it will not run. Drivers carry tools with them in their trucks for this purpose, and also in order to make minor repairs to their own trucks.⁹

The evidence in contrast was provided by several drivers. Terry Olsen testified that it was not usual to get assistance from yard attendants or mechanics in loading his truck, but that they will help on occasion depending on their own work load. He stated that yard attendants and mechanics have their own responsibilities, and need to attend to them. Olsen testified that yard attendants are usually tied up with customers who are bringing in equipment in for repair, and the mechanics are very busy with the servicing of the equipment. He stated that he has little more than a passing word with yard attendants on a daily basis, and even less contact than that with mechanics.

Olsen further testified that when he loads his truck for the first run of the day, typically there aren't other people in the facility yet. If he needs help, another driver may help him.

⁸ Drivers are also the only ones responsible for keeping logbooks, pursuant to Department of Transportation regulations.

Deliveries are then made all over the Twin Cities metropolitan area, as well as out-of-town, and he may return to the Plymouth facility an average of five times per day to pick up more equipment for delivery. After the first delivery, dispatcher Jan Johnson is in the office, and Olsen picks up paperwork from him, gathers the equipment, and leaves again. Olsen stated that he has never filled in for a missing yard attendant, mechanic, or dispatcher, and that he had never seen yard attendants going out with any customer deliveries. He admitted having called Aldinger for mechanical advice on getting something running, but stated that if he were unsuccessful, Rivers would send a mechanic out to fix it. Olsen may wait for the mechanic to get there, or he may leave to do other deliveries.

Burnsville driver Dan Klein testified that his contact with the yard attendants and mechanics at the Burnsville location was “basically in passing,” and that he had never replaced them if they were absent. He stated that occasionally he got help from them in loading his truck, but most of the time he loaded it himself. He further stated that once he needed to have a mechanic look at some equipment that didn’t work in order to get it running. He testified that there had been safety training conducted at his facility by operations manager Ahrens. He denied that mechanics serviced his truck, other than one time when a mechanic spent 45 minutes unsuccessfully trying to fix a winch on his truck.

Oakdale driver Willis Buck testified that he gets his daily supervision from Salonen or Johnson, and that he has a lot of contact with drivers at the other facilities some weeks and very little other weeks. He stated that he has never had to fill in for a yard attendant or mechanic who was absent, and that he does not interact with the parts employees or service coordinator at Plymouth. Buck stated that after his first run of the day, he gets help loading and unloading

⁹ There is also a common shop toolbox where anyone can get tools.

from the other Oakdale employees, unless they are too busy. The drivers who testified stated that they considered Salonen to be their supervisor.

On the basis of the foregoing and the record as a whole, I conclude that the unit as petitioned-for by the Petitioner, is an appropriate unit. The Board has found that drivers alone may constitute an appropriate unit for collective bargaining when it is established that the drivers comprise a distinct and homogenous group who share a community of interest sufficiently different from that of other employees. Mc-Mor-Han Trucking Co., Inc., 166 NLRB 700 (1967). In defining an appropriate bargaining unit, the Board's focus is on whether the employees share a community of interest, weighing various factors, including

[A] difference in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications, training and skills; differences in job functions and amount of working time spent away from the employment or plant situs ... the infrequency or lack of contact with other employees; lack of integration with the work functions of other employees or interchanges with them; and the history of bargaining.

Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962); Banknote Corp. of America v. NLRB, 84 F.3d 637, 647-648 (2d Cir. 1996) In deciding the appropriate unit, the Board first considers the union's petition and whether that unit is appropriate. If the petitioner's unit is not appropriate, the Board may consider an alternative proposal for an appropriate unit. P.J. Dick Contracting, 290 NLRB 150, 151 (1988) The Board's declared policy is to consider only whether the unit requested is an appropriate one, even though it may not be the optimum or most appropriate unit for collective bargaining. Black & Decker Mfg. Co., 147 NLRB 825, 828 (1964).

Applying these principles to the facts set forth above, I find that the community of interest that the drivers at the Employer's three locations share is sufficiently distinct to make them an appropriate group for collective bargaining, for the following reasons. First, the drivers are separately supervised by delivery manager Salonen. While Salonen may have additional responsibilities for tracking down and accounting for equipment, and may use yard employees to assist him, it appears that the yard employees are actually supervised on a day-to-day basis by John Aldinger. Second, drivers are required to hold commercial drivers licenses, unlike other of the Employer's employees. This fact creates a separateness in that drivers must adhere to Department of Transportation regulations which require them to keep logbooks and to do comprehensive daily safety checks of their vehicles. Drivers are also responsible for operating the largest and presumably the most complicated vehicles in the Employer's fleet, vehicles no one without a commercial drivers license can operate.

Third, drivers have a different work schedule from the other employees, starting their day at 5:45 a.m., and working until the job is done. They begin their day with other drivers, and help each other load equipment for the first run if necessary. Fourth, they receive their work assignments from the dispatcher, no matter where they are stationed. Fifth, they have duties which are discrete from other employees the Employer contends should be included in the unit, chiefly driving and delivering equipment. They do not substitute or fill in for any of the other employees. They, unlike the other employees, leave the Employer's facilities for much of the day. Sixth, the drivers derive a distinct community of interest from the fact that they were for several years leased from Penske, and only very recently hired into the Employer's operation as a group. Finally, there is no history of collective bargaining in a broader unit than the one sought by the Petitioner.

These factors in combination override the fact that there are work-related contacts with other non-driver employees, and that there may be a certain degree of overlap of functions when it comes to dealing with the delivery and operation of the rental equipment. I also note that while there are areas of similarity among drivers, mechanics and yard attendants,¹⁰ that there are very few similarities between the duties of the drivers and the parts employees, service coordinator, and dispatcher, other than that they are subject to the same personnel policies and benefits structure. While the Employer urges that there are many occasions for interchange among the drivers, mechanics and the yard attendants, the record evidence reflects that drivers do not do the major mechanical work performed by the mechanics, and that while yard attendants may make some deliveries, it is not the chief focus of their duties.

In Overnite Transportation Company, 322 NLRB 374 and 723 (1996), the Board overruled the Regional Director and found appropriate a separate unit of drivers, over the Employer's contention that mechanics should also be included. Although, as here, the Employer's terminal was small and there was significant integration of operations, overlap of duties, and work-related contacts, the Board found that the drivers had a separate and distinct community of interest. In support of this conclusion, the Board cited many of the factors also present in the instant case: separate supervision, no regular interchange, different shifts, and different training. As in that case, the employees here whom the Employer contends should be included in the unit do not share such a close community of interest with drivers as would mandate their inclusion in the petitioned-for unit. Accordingly, and even assuming that the

¹⁰ Such as a common benefits system, access to common lunchroom and driver/mechanics room, access to a common toolbox, use of a common radio system, and use of forklifts. While I note that there was a stipulation to the effect that the employees all share the same wage structure, no evidence was adduced as to how much the employees in question are paid.

broader unit proposed by the Employer would also be an appropriate unit, I conclude that the unit sought by the Petitioner is itself an appropriate unit.

6. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers employed by the Employer at its Plymouth, Minnesota, St. Paul, Minnesota, and Burnsville, Minnesota locations; excluding office clericals, service coordinator, mechanics, yard attendants, dispatcher, parts employees, guards and supervisors as defined in the Act as amended, and all other employees.

DIRECTION OF ELECTION¹¹

An election by secret ballot will be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are persons who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike

¹¹ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by April 5, 1999.

which commenced more than 12 months before the election date and who have been permanently replaced.¹²

Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Teamsters Local 120, affiliated with the International Brotherhood of Teamsters, AFL-CIO.

Signed at Minneapolis, Minnesota, this 22nd day of March, 1999.

/s/ Ronald M. Sharp

Ronald M. Sharp, Regional Director
Eighteenth Region
National Labor Relations Board

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¹² To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an election eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. North Macon Health Care Facility, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. In order to be timely filed, this list must be received in the Minneapolis Regional Office, 234 Federal Courts Building, 110 South Fourth Street, Minneapolis, MN 55401, on or before March 29, 1999. No extension of time to file this list may be granted by the Regional Director except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.